FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.116 OF 2006

Office notes, office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.Prakash Naik for the Applicant.
Mrs.M.H.Mhatre, APP. for the State.

CORAM : R.S. MOHITE,J.
DATED : 01/3/2006.

P.C.

1. This revision impugns judgments of the two lower courts which are concurrent and under which the applicant has been convicted for an offence punishable under Section 78 and 79 of the Trade and Merchandise Marks Act, 1958. There is also conviction under Section 83 of the Copyright Act,1957. I have perused the impugned judgments and orders. I find that the conviction is passed on cogent reasons. The case of the complainant was that they were manufacturing and selling

liquid blue since 1973. They were the proprietors of the trade mark "CAPTAIN" since 1973. The present applicant also started dealing in similar business. The complainant noticed in various shops that the accused was selling his goods under the same trade mark "KAPTAN" and the label being used was similar. It was on this footing the complaint was filed under Section 16 for using of false trade mark.

2. It was sought to be argued before me that there were several differences in the mark being used by the complainant and the mark being used by the accused and there was difference. In one there was message in English words and in other there was message in Gujrati. One of the mark had a male person whereas the other there was female. In my view, the trial courts have rightly held that the details of the differences are not the material factor. The material factor is as to whether two marks are deceptively

similar. I have seen both the marks. The trial courts have rightly held that the marks are deceptively similar. In fact the word "CAPTAIN" have been copied. The colour and manner of printing of the labels are also similar. The intention of the accused has been correctly pointed out by the lower court. It could only to deceive the consumer. In the circumstances, I am not inclined to entertain the petition. It was sought to be argued that the sentence of three months was excessive. I am not inclined to agree with the counsel for the applicant that the sentence can be reduced by increasing fine amount. In the circumstances, application is dismissed.

(R. S. MOHITE, J.)